

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

REVISION NO. 26444 OF 2023

(Arising from Civil Case No. 24 of 2022 in the District Court of Temeke At Temeke)

ELIKANA EMANUEL

.....

APPLICANT

VERSUS

PETER ANDREW SILAYO

.....

RESPONDENT

RULING

S.M. MAGHIMBI, J:

The applicant herein has lodged this application moving the court to call for the records of Civil Case No. 24/2023 pending before the District Court of Temeke for the purpose of setting aside the said order. In his Chamber Summons, the Applicant's prayers under the Chamber Application are that;-

1. This Honorable Court be pleased to call for the record of Civil case No. 24 of 2023 and set aside the order of the District Court dated 02nd November 2023.
2. Cost of the Application.
3. Any other reliefs this Honorable Court deem fit and just to grant.

The application was supported by an Affidavit sworn by Elinihaki Kabura who is a legal counsel representing the Applicant. On his part, the

respondent, duly represented by Mr. William Fungo, learned Counsel, raised preliminary points of objection on point of law in limine litis that;

- i. The application is bad in law for contravening the mandatory provisions of Section 79(2) of the Civil Procedure Code, Cap. 33, R.E 2019.
- ii. The application is incompetent and bad in law for citation of a non-existing and/or repealed provision of the law.
- iii. The application is an abuse of court process for referring to an interlocutory Ruling and/or Order of the Temeke District court as issued on 02nd day of November, 2023.

Given the urgency of the matter, by consent of parties, disposal of the application was for both the objections raised and substance of the application concurrently. Given the time constraints that I have had at this period of the year, and at the same time taking into consideration the nature of the urgency of the matter, being a business that stopped running following the impugned order, and the fact that it is my last day before I commence annual leave, I found it only just and fair that the fate of the parties should be made clear before I go on a break. Therefore, this order is just on the verdict/decision of this court with regard to the prayers sought. Detailed reasons for the decision shall follow in due course.

That said, and having considered the submissions of the parties and the records before me, I make the following orders:

1. The **Preliminary Objections** raised by the respondent **are hereby overruled.**
2. The **Order of the District Court of Temeke in Civil Case No. 24/2022;** an order restraining the respondent, his employees, agents, tenants, servants, lessee or any other person from bringing nuisance in the form of noise at the business conducted at the premises namely Plot No. 379 Bolck "E" (SAVOY BAR/CLUB) situated at Amani Street Yombo Vituka; an order written on 26/10/2023 and delivered on 02/11/2023 **is hereby Revised and Set Aside.**
3. The applicant shall have his costs for this application.

Dated at Dar-es-salaam this 22nd day of December, 2023



A handwritten signature in black ink, appearing to be "S.M. Maghimbi", is written over a horizontal dotted line.

S.M. MAGHIMBI
JUDGE